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November 22, 1995

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

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Re: Location and Monitoring Services Rules  
PR Docket No. 93-61  
*Ex Parte* Presentation

Dear Mr. Caton:

On November 8, 1995, David E. Hilliard, on behalf of Pinpoint Communications, Inc., and Kathleen Q. Abernathy on behalf of Airtouch Teletrac, met with legal assistants from the offices of Chairman Hundt and Commissioners Ness and Chong regarding the above-referenced matter. At those meetings, Ms. Abernathy and Mr. Hilliard reiterated the positions of Teletrac and Pinpoint regarding the rule changes necessary to facilitate the rapid introduction of competitive multilateration Location and Monitoring Service ("LMS") systems in this country by grandfathered licensees.

One of the specific proposals that existing multilateration licensees have advanced concerns the flexibility to relocate grandfathered base stations. The rules as adopted in the *Report and Order* in Docket 93-61 provide for relocations by grandfathered licensees of no more than 2 kilometers. Pinpoint, Teletrac, MobileVision and Uniplex Corporation have sought the flexibility to move within a 10-mile radius of the sites identified in their licenses (or pending applications) as of February 3, 1995.<sup>1</sup> As the multilateration LMS licensees explained in their *August 22 ex parte*, because of the protracted delays in the resolution of this proceeding, the licensees are finding that some of the existing licensed sites or those specified in modification applications filed since the *Report and Order*, e.g., on or before May 21 and August 11, 1995, are no longer available for use. Moreover, in light of the

<sup>1</sup> See Letter of David E. Hilliard, Attorney for Pinpoint, *et al.*, to Rosalind K. Allen, Chief, Licensing Division, Wireless Telecommunications Bureau (dated Aug. 22, 1995) at 3. ("August 22 *ex parte*").

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competition for sites among a plethora of wireless services, the availability of alternative sites within a 2 km radius of the original site is often not a realistic option.<sup>2</sup> Nor is it now practical or economically realistic to embark on the often lengthy and uncertain enterprise of obtaining zoning variances to build a new tower. Indeed, building a new tower is simply not an option if the grandfathered licensee construction date is to be met (currently April 1, 1996). Finally, relocation may become necessary as grandfathered licensees engage in the process of working out sharing arrangements with other systems, as required in the *Report and Order*.<sup>3</sup> For these reasons, grandfathered LMS licensees have sought the flexibility to relocate grandfathered sites up to 10 miles from the sites identified in their licenses (or pending applications) as of February 3, 1995.<sup>4</sup>

At the November 8 meetings referenced above, the following question was raised: why should grandfathered LMS licensees be able to relocate their sites 10 miles when the Commission generally has limited Part 22 and Part 90 commercial mobile radio service ("CMRS") licensees,<sup>5</sup> and has proposed to limit local Part 90 licensees operating in the 220-222 MHz band,<sup>6</sup> to relocations of 2 km or less? As explained below, there is a material difference between grandfathered LMS licensees, on the one hand, and Part 22 and Part 90 licensees that are subject to, or may become subject to, the 2 km relocation limit, on the other hand. Thus, sound public policy supports permitting grandfathered LMS licensees to relocate up to 10 miles.

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<sup>2</sup> Indeed, several licensees have sought waivers of the 2 km rule because of the lack of alternative sites within a 2 km radius.

<sup>3</sup> Grandfathered licensees are also required to share with MTA auction winners. 47 C.F.R. § 90.353.

<sup>4</sup> The 10 mile radius reflects a compromise. LMS licensees have proposed service radii ranging from 5 miles to 20 miles.

<sup>5</sup> See Implementation of Sections 3(n) and 332 of the Communications Act, Third Report and Order, 9 F.C.C. Rcd 7988, 8144-45 (1994).

<sup>6</sup> See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, Fourth Notice of Proposed Rulemaking, PR Docket No. 89-552, FCC 95-381 (released Aug. 29, 1995), ¶ 9.

First and foremost, the Part 22 and Part 90 licensees subject to the 2 km limit were licensed on an exclusive basis. They are required to provide protection to co-channel licensees authorized in adjacent geographic areas. Multilateration LMS licensees, in contrast, were licensed as automatic vehicle monitoring systems on a shared basis and must operate on a non-exclusive basis under the new LMS rules. Specifically, the *Report and Order* in Docket 93-61 obligates grandfathered licensees to share spectrum with one another and with MTA auction winners. Accordingly, LMS licensees, whether grandfathered or auctioned, do not have the same sort of expectation as, for example, Part 22 licensees that they will be protected from co-channel systems. This fundamental difference in the assignment of frequencies justifies the treatment of LMS licensees and other Part 90 and Part 22 licensees on a different basis with respect to site relocation.<sup>7</sup>

In addition, providing LMS licensees the flexibility to relocate -- but not necessarily to increase the number of grandfathered base stations<sup>8</sup> -- would be sound public policy. In authorizing the construction of grandfathered systems, the Commission intended to afford LMS licensees the opportunity quickly to offer competitive services to the public based on multilateration LMS technology. For the reasons outlined above, moderate site flexibility, as proposed by the grandfathered LMS licensees, will help ensure that grandfathered licensees are able to construct technologically viable, albeit minimal, systems and that location services can be offered to the public on a competitive basis as rapidly as possible.

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<sup>7</sup> In addition, although the grandfathered licensees are limited to the number of sites for which they were authorized as of February 3, 1995, the Commission has correctly recognized that multilateration LMS is, in its essence, a wide-area service, as evidenced by the fact that the FCC plans to auction LMS licenses on an MTA basis.

<sup>8</sup> Pinpoint does not mean here to retract its proposal that grandfathered multilateration LMS licensees be permitted to build out their systems within the BTAs in which they are authorized or its support, in the alternative, for the proposals of other licensees, *e.g.*, Southwestern Bell Mobile Systems ("SBMS"), that grandfathered licensees be able to build out their systems. See Petition for Reconsideration of Pinpoint, PR Docket No. 93-61 (filed Apr. 24, 1995) at 13-15; Reply of Pinpoint, PR Docket No. 93-61 (filed June 7, 1995) at 10. However, for purposes of perfecting their grandfathered status by the Commission's deadline (currently April 1, 1995), grandfathered multilateration licensees should have the opportunity to relocate their base stations within a modest radius. It is a separate issue whether they should have the opportunity to expand their systems subsequent to securing grandfathered status as Pinpoint, SBMS, and others have proposed.

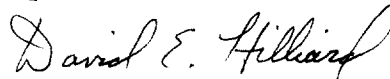
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Importantly, site flexibility will not increase the difficulties of sharing for multilateration MTA auction winners. The original sites in Pinpoint's grandfathered systems were selected to serve congested city centers, where the need for accurate, dependable radiolocation is the greatest. (Pinpoint assumes this is true for other licensees as well.) Accordingly, other grandfathered licensees and MTA auction winners will be required to work out a sharing arrangement with Pinpoint in the areas where radio traffic on LMS systems will be the densest. Assuming that will be accomplished,<sup>9</sup> then site relocations, generally away from such areas, will not cause any cognizable additional burden from the standpoint of sharing. Site relocation will, however, bolster the vibrancy of competition by improving the ability of grandfathered licensees to construct viable systems.

In sum, there is no public policy justification for treating the relocation of grandfathered multilateration LMS stations in the same restrictive manner as the sites of exclusive licensees authorized under Part 90 and Part 22. Accordingly, grandfathered LMS licensees should be allowed to relocate existing (or pending) base stations sites within a ten-mile radius of the sites as they existed in the Commission's records on February 3, 1995.

An original and one copy of this letter is being filed in accordance with the FCC's *ex parte* rules.

Respectfully submitted,



David E. Hilliard  
Edward A. Yorkgitis, Jr.  
Attorneys for Pinpoint  
Communications, Inc.

cc: Lisa Smith, Legal Advisor to Commr. Barrett  
Rudolfo Baca, Legal Advisor to Commr. Quello  
David Siddall, Legal Advisor to Commr. Ness  
David Furth, Legal Advisor to Commr. Chong  
John Nakahata, Spec. Asst. to Chairman Hundt  
Kathleen Q. Abernathy, Esq.

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<sup>9</sup> Pinpoint has described on numerous previous occasions in this docket the feasibility of time sharing among multilateration LMS licensees.